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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re J.D. et al., Persons Coming Under the
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

M.D.,

Defendant and Appellant.

E060078

(Super.Ct.No. RIJ100840)

OPINION

APPEAL from the Superior Court of Riverside County. Tamara L. Wagner,
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Linda Rehm, under appointment by the Court of Appeal, for Defendant and
Appellant.

Pamela J. Walls, County Counsel, Julie Koons Jarvi, Deputy County Counsel, for
Plaintiff and Respondent.

In this case, the juvenile court denied M.D. (father) reunification services, and set a hearing pursuant to Welfare and Institutions Code¹ section 366.26 for termination of his parental rights as to J.D. and R.D. (the children) and for selection of a permanent placement for the children. Father petitioned the court under section 388 to set aside those orders, and requested the court enter new orders granting him reunification services, returning the children to his custody, and vacating the section 366.26 hearing. The juvenile court conducted an evidentiary hearing on father's petition and denied it, finding (1) father did not demonstrate changed circumstances and (2) entry of the requested orders would not be in the best interests of the children. The court proceeded to terminate father's parental rights, found the children to be amenable to adoption, and set a review hearing for adoption.

Father appeals from the orders denying his section 388 petition and terminating his parental rights. He contends the juvenile court abused its discretion under section 388 because he established changed circumstances, to wit, his sobriety and efforts to rehabilitate himself, and because returning the children to their biological father and offering father reunification services was in the best interests of the children. He also contends the trial court erred by not finding applicable the so-called "benefit exception" to termination of parental rights based on a continuing benefit to the children from a parental relationship with father.

¹ All further undesignated statutory references are to the Welfare and Institutions Code.

The record amply supports the juvenile court's orders, and we find no abuse of discretion. We therefore affirm.

I.

FACTS AND PROCEDURAL BACKGROUND

A. *Petition and Background to Jurisdictional Hearing*

In a petition filed on January 24, 2013, the Riverside County Department of Public Social Services (DPSS) alleged the children were dependents within the jurisdiction of the juvenile court based on the risk of serious physical harm and lack of parental support. (§ 300, subds. (b), (g).) The petition alleged the children's mother, R.U. (mother), had an extensive history of substance abuse and lived a transient lifestyle and, therefore, was unable to provide the children with a safe and stable home. The petition alleged father also had an extensive history of substance abuse and a criminal history, and that he was incarcerated and, therefore, could not provide for the children.

A detention report filed on January 24, 2013, stated that, in a referral about possible neglect of the children, the reporting party informed DPSS that mother used methamphetamine while she was pregnant with R.D.² During the investigation that lead to the children's detention, mother told DPSS that she lived with father. This conflicted

² Mother did not appear at the jurisdictional hearing, and her attorney presented no argument or evidence in opposition to the jurisdictional finding. Mother did not appear at the selection and implementation hearing either, and mother's attorney informed the juvenile court that mother did not oppose termination of her parental rights and agreed that adoption was the appropriate disposition. Finally, mother did not file a notice of appeal. Therefore, we will not discuss in detail facts regarding mother and, instead, we will focus on father.

with information given to DPSS, that mother was hiding from father. Father, who was in custody at the time, appeared at the detention hearing and denied the allegations set forth in the petition. The juvenile court found a prima facie case that the children were dependents within the meaning of section 300, subdivisions (b) and (g), and ordered the children's continued detention.

In anticipation of the jurisdictional hearing, DPSS interviewed father. Father informed DPSS that he was incarcerated at the time of the initial investigation, and confirmed that mother had a history of drug abuse and was living a transient lifestyle. Father admitted he had an extensive history of drug use and that he had many drug related arrests, including pending charges of being under the influence of a controlled substance. However, father told DPSS he was no longer engaged in criminal activity and he had been sober since his last arrest. He further stated that he was seeking gainful employment, he wanted to be a good father to the children, and he would be able to provide for them. Father visited the children at the DPSS office, and was provided with a referral for substance abuse counseling and parenting training. He also participated in the development of a case plan for the children, and informed DPSS he would comply with the plan to ensure his reunification with the children. Nonetheless, based on father's criminal history, drug use, and past failure to provide support to the children, DPSS concluded reunification services for father would not be in the best interests of the children, and recommended the juvenile court sustain the petition and deny reunification services to father. In particular, DPSS recommended the court find that father was not entitled to reunification services under section 361.5, subdivision (b)(10).

In an addendum report prepared for the continued jurisdictional hearing and filed on March 11, 2013, DPSS reported that father continued to visit the children and acted appropriately during the visits, and further reported that father had submitted documentation of his participation in Narcotics Anonymous (NA) meetings and of his involvement with his church. Father informed DPSS he was still sober and he was no longer engaged in any criminal activity. Moreover, father told DPSS he had recently married, and reiterated his wish to be active in the children's lives. DPSS again recommended the juvenile court sustain the petition and deny reunification services to father.

Before the continued jurisdictional hearing, father submitted to the juvenile court certificates demonstrating that, from February 1 to March 12, 2013, he regularly attended bible studies and other programs at the River of Life Christian Center as part of his drug rehabilitation, and that, from February 12 to March 10, 2013, he attended eight Spanish language NA meetings.

B. Jurisdictional Hearing and Denial of Reunification Services to Father

During the jurisdictional hearing conducted on March 14, 2013, father's counsel presented no affirmative evidence in opposition to the petition and did not object to the reports submitted by DPSS. Nonetheless, counsel asked that the juvenile court not sustain the petition. In the event the juvenile court did sustain the petition, counsel requested that father be granted reunification services. Although counsel acknowledged father's prior drug abuse and made "no excuses" for father's past conduct, he asked the court to consider that "a number of things have changed in [father's] life." Counsel

informed the court that father recently married, and that father and his wife were “working hard on helping father stay clean and sober.” Counsel argued that the certificates from the River of Life Christian Center and NA were evidence of father’s commitment to sobriety. Counsel also informed the juvenile court that, even if it were to deny father reunification services, father would continue attending meetings at his church and NA, he would attempt to get into a drug rehabilitation program on his own, and he would file a petition under section 388 for reunification services based on changed circumstances. Counsel acknowledged that father’s current sobriety and attendance of drug rehabilitation meetings occurred after the petition was filed, but counsel nonetheless argued father was committed to staying sober and made reasonable efforts at reunification, which the juvenile court should consider when deciding whether to grant father reunification services.

The juvenile court stated that, based on the evidence presented, it could not “get to the second prong” of section 361.5, subdivision (b)(10), meaning it could not make a finding that father made reasonable efforts to treat the problems that lead to the children’s detention. Father’s counsel responded that he understood the court was limited in what it could do at the time with respect to providing reunification services, but again expressed father’s commitment to staying sober and again pointed to “very strong changes” father had made in his life since his last arrest.

The juvenile court found by a preponderance of the evidence that the children came within the meaning of section 300, subdivisions (b) and (g), and sustained the petition. The court also found that father was a person described in section 361.5,

subdivision (b)(10), and denied him reunification services as not being in the best interests of the children. The juvenile court noted that neither parent “made progress towards alleviating or mitigating the causes that necessitated the [children’s] placement,” and that father’s showing of reasonable efforts as of February 1, 2013, were “real[ly] minimal at best” and did not represent “a significant level of progress” The court then set a hearing under section 366.26. However, the court stated it did not want father “to be discouraged” by the orders it was required to make by law, and said, “You’re making the steps that your counsel’s indicat[ed], don’t let that set you backward. Keep going forward and keep doing what you’re supposed to be doing.”

C. Father’s Section 388 Petition and Background to the Section 366.26 Hearing

In a status review report filed on June 26, 2013, DPSS reported that father continued to visit with the children on a weekly basis, during which father held, hugged, and played with them. DPSS reported no problems with father’s visits. Nevertheless, DPSS reported father still had not addressed the issues that gave rise to the children’s detention and placement, and it continued to recommend termination of father’s parental rights and adoption of the children.

On October 11, 2013, father filed a petition pursuant to section 388, arguing changed circumstances warranted an order vacating the selection and implementation hearing, returning the children to father in family maintenance, and offering father reunification services. In support of the petition, father submitted proof of his progress in and eventual completion of the Inland Valley Recovery Center (IVRC) outpatient drug

program and of his negative drug tests. Father submitted additional certificates of his regular attendance of programs at the River of Life Christian Center and of his regular attendance of NA meetings. Father also submitted proof of his enrollment in Career Colleges of America to become a drug and alcohol counselor, and of his part-time employment with an upholstery business. Finally, father submitted a letter from his parole officer, in which the officer attested to the strides father had made to improve his life. The juvenile court set father's motion to be heard on the same day as the selection and implementation hearing.

In an addendum report prepared for the section 366.26 hearing and filed on November 13, 2013, DPSS again recommended the juvenile court terminate father's parental rights and find the children adoptable. With respect to father's efforts since the juvenile court denied him reunification services, DPSS emphasized father's past drug use and criminal history, and his past failure to provide support for the children. While acknowledging father's completion of a drug treatment program, DPSS reported father relapsed after completing a drug treatment program in 2011 and concluded there was no guarantee father would remain sober this time or that he could safely provide for the children in the future. Finally, DPSS reported that R.D. had been diagnosed with possible developmental delay and cerebral palsy, and with asthma, which was not responsive to treatment, and that he had been referred to the Inland Regional Center for physical and occupational therapy.

D. *Hearing on the Section 388 Petition and the Section 366.26 Hearing*

On the day of the hearing on father's section 388 petition, father filed additional documentation of his continued attendance at NA meetings and of his continued employment, and filed letters from the legal guardians to his other children attesting to father's efforts to become a better parent since his release from prison.

Mr. Anguka, the social worker assigned to the children's case, testified that before preparing his most recent report, in which he recommended the court deny the section 388 motion, he spoke to father but did not interview him. Anguka also testified he did not personally supervise father's visits with the children, and he did not know if the children acknowledged father as their father.

Father testified he was not provided any reunification services for the children, and that the certificates of completion in support of his section 388 petition were for programs he completed on his own initiative. Father admitted he is an addict, but testified he learned through NA and other programs "how to cope with that and how to call [his] support groups and to just not use." Father testified his wife did not use drugs, and that he can rely on her for support in his rehabilitation. With respect to his education, father testified he was enrolled in Career Colleges of America to become a drug and alcohol counselor, and that he would receive his certificate in April 2014. He testified his courses in drug and alcohol counseling helped him learn to cope with his own addiction.

With respect to his criminal history, father admitted he had tattoos and that in the past he was affiliated with a gang. However, father renounced his affiliations with the gang, he no longer associated with gang members or with people who used drugs, and he

spoke to the sheriff's department about his past affiliations and of his desire to put them behind him. Father testified his wife had no gang affiliations and was supportive of his leaving that lifestyle. Father testified he had a pending charge of possession of a controlled substance, but that his attorney was seeking to have the case dismissed based on his completion of a drug rehabilitation program and parenting courses. He also testified that his parole officer was a source of support for his continued sobriety.

Father testified he worked part time for four to six hours a day at an upholstery business. He also testified that he consistently visited with the children one day a week for an hour, and that the children recognized him as their father. Father acknowledged that R.D. had some potential health issues, which would entail "an awful lot of work as a parent," but testified he wanted to be reunited with the children and to provide for them. Father also testified that, even if the juvenile court were to deny his motion and terminate his parental rights, he wanted to continue seeing his children, and he would be respectful of their caregiver or adopted parents. When asked why he would still want to see the children even if they were adopted, Father testified, "Because those are my children and I love them." Father testified that if the juvenile court were to grant his section 388 petition and offer him reunification services, his wife was willing to participate in those services with him.

On cross-examination by counsel for DPSS, father testified R.D. never lived in his home, and J.D. only lived in father's home for seven or eight months. Father testified he started using drugs when he was 15 years old, he had used drugs his entire adult life, and that his drug of choice is methamphetamine. He testified that he was enrolled in a drug

rehabilitation program in 2010 and graduated from the program in February 2011. The program was 90 days inpatient and 60 days outpatient. However, father was arrested in December 2012 for possession of drug paraphernalia or being under the influence of a controlled substance. Father testified he received no drug treatment while he was in prison. Father testified he had completed two drug rehabilitation programs in total, including most recently the IVRC program. Further, he testified that after completing his most recent program, he volunteered to enroll in a 16-week aftercare program through IVRC, which he attends once a week. The last time father was drug tested was on June 27, 2013, while he was still in the IVRC program. Father testified he was aware of R.D.'s asthma, but also said he was never informed of R.D.'s possible developmental delays and cerebral palsy, and he denied receiving a copy of DPSS's addendum report filed on November 13, 2013.

On cross-examination by mother's counsel, father testified that J.D. was not living with father at the time of his arrest in December 2012, but was living with mother. Father testified he rarely visited with J.D. during that time because mother would not let him see J.D. Finally, father testified he did not think of going to the family court to obtain custody of J.D.

Father's counsel argued that father satisfied both prongs of section 388—his circumstances had changed, and maintaining his rights and offering him reunification services was in the best interests of the children. According to counsel, the changed circumstances was that, notwithstanding father's past history of drug use and failed completion of a drug program, father had accomplished more this time than merely

completing a drug program. In addition to completing another drug program, father had disassociated himself from gang members and from fellow addicts, he tested clean for drug use, and he was in the process of furthering his education. These actions, according to counsel, showed that father admitted his addiction and had matured. Counsel argued father took extraordinary steps and was in the process of changing his life for the better. With respect to the best interests of the children, counsel argued they would not lose contact with their caregiver (mother's second cousin), but would gain from being reunited with their biological father.

While commending father for completing another drug treatment program, counsel for DPSS argued father did not establish changed circumstances because he only demonstrated sobriety for a brief period. In light of father's past relapse after completing a drug treatment program, counsel argued father's circumstances were at most changing, but that the children needed stability and permanency immediately. Counsel for the children joined in DPSS's arguments that, although father was changing his life, it would not be in the best interests of the children to maintain father's parental rights or to provide him with reunification services.

The juvenile court also commended father for his progress, including his disassociation from the gang lifestyle. However, the court agreed with DPSS that father merely showed he was in the process of changing his life, and had not shown significant changed circumstances. The juvenile court also noted that, even if it were to find changed circumstances, it could not find that maintenance of father's parental rights and provision of reunification services would be in the children's best interests. Although

father had regular visitation with the children since his release from custody, he was away from them for the majority of their lives. Therefore, the court denied father's petition under section 388.

With respect to termination of parental rights, counsel for both DPSS and the children submitted on the reports filed with the court, and mother's counsel informed the court that mother supported termination and adoption. Counsel for father objected to the termination of father's parental rights and requested that the court grant the children's caregiver legal guardianship instead, and permit father to continue visiting with them. The juvenile court rejected the alternative of legal guardianship, found no exception applicable to termination of parental rights, terminated mother and father's parental rights to the children, and found them likely to be adopted.

Father timely appealed.

II.

DISCUSSION

A. *The Juvenile Court Did Not Abuse Its Discretion by Denying Father's Section 388 Petition*

"A juvenile court order may be changed, modified or set aside under section 388 if the petitioner establishes by a preponderance of the evidence that (1) new evidence or changed circumstances exist and (2) the proposed change would promote the best interests of the child. [Citation.] The parent bears the burden to show both a legitimate change of circumstances and that undoing the prior order would be in the best interest of the child. [Citation.] Generally, the petitioner must show by a preponderance of the

evidence that the child's welfare requires the modification sought. [Citation.]" (*In re A.A.* (2012) 203 Cal.App.4th 597, 611-612 [Fourth Dist., Div. Two].)

"Not every change in circumstance can justify modification of a prior order. [Citation.] The change in circumstances must relate to the purpose of the order and be such that the modification of the prior order is appropriate. [Citation.] In other words, the problem that initially brought the child within the dependency system must be removed or ameliorated. [Citation.] The change in circumstances or new evidence must be of such significant nature that it requires a setting aside or modification of the challenged order. [Citation.]" (*In re A.A., supra*, 203 Cal.App.4th at p. 612.)

Section 388 is "an 'escape mechanism' when parents *complete a reformation* in the short, final period after the termination of reunification services but before the actual termination of parental rights. [Citation.]" (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 528, italics added.) It is not enough for a parent to show an incomplete reformation or that he is in the process of changing the circumstances which lead to the dependency. "After the termination of reunification services, the parents' interest in the care, custody and companionship of the child are no longer paramount. Rather, at this point 'the focus shifts to the needs of the child for permanency and stability' [Citation.] A court hearing a motion for change of placement at this stage of the proceedings must recognize this shift of focus in determining the ultimate question before it, that is, the best interest of the child." (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) "A petition which alleges merely changing circumstances and would mean delaying the selection of a permanent home for a child to see if a parent . . . might be able to reunify at some future point, does

not promote stability for the child or the child's best interests. [Citation.] “[C]hildhood does not wait for the parent to become adequate.” [Citation.]” (*In re Mary G.* (2007) 151 Cal.App.4th 184, 206.)

The courts have consistently held that, when long-term drug addiction is the prime reason for a parent's unfitness and of the dependency, it is not enough for the parent to show they have started the process of getting sober or that they have been sober for a brief period, especially when the record demonstrates the parent relapsed after earlier failed attempts at treatment and rehabilitation. (*In re Marcelo B.* (2012) 209 Cal.App.4th 635, 641-642; *In re C.J.W.* (2007) 157 Cal.App.4th 1075, 1081 [Fourth Dist., Div. Two]; *In re Mary G.*, *supra*, 151 Cal.App.4th at p. 206; *In re Amber M.* (2002) 103 Cal.App.4th 681, 686-687; *In re Clifton B.* (2000) 81 Cal.App.4th 415, 423-424; *In re Casey D.* (1999) 70 Cal.App.4th 38, 48; *In re Kimberly F.*, *supra*, 56 Cal.App.4th at p. 531, fn. 9.)

“It is not enough for a parent to show *just* a genuine change of circumstances under the statute. The parent must show that the undoing of the prior order would be in the best interests of the child. [Citation.]’ [Citation.] The fact that the parent ‘makes relatively last-minute (albeit genuine) changes’ does not automatically tip the scale in the parent’s favor. [Citation.] Instead, ‘a number of factors should be examined.’ [Citation.] First, the juvenile court should consider ‘the seriousness of the reason for the dependency’ [Citation.] ‘A second important factor . . . is the strength of the existing bond between the parent and child’ [Citation.] Finally, as ‘the essence of a section 388 motion is that there has been a change of circumstances,’ the court should consider ‘the nature of the change, the ease by which the change could be brought about, and the

reason the change was not made before’ [Citation.] ‘While the bond to the caretaker cannot be dispositive . . . , our Supreme Court made it very clear in . . . that the disruption of an existing psychological bond between dependent children and their *caretakers* is an extremely important factor bearing on any section 388 motion.’ [Citation.]” (*In re D.R.* (2011) 193 Cal.App.4th 1494, 1512.)

There is no doubt father made significant efforts at rehabilitation since his release from prison and since his most recent drug arrest. He completed the IVRC drug program and was voluntarily participating in a 16-week aftercare program at the time of the hearing on his petition. As part of that program, father regularly tested negative for drug use. Father also completed a parenting course, regularly attended bible studies and other programs at the River of Life Christian Center as part of his drug rehabilitation, and he consistently attended NA meetings. Father renounced his association with a gang, engaged in no further criminal activity, and actively worked with his parole officer and with the sheriff’s department to complete his rehabilitation and to put the gang lifestyle behind him. Father also recently married, and his wife was fully supportive of father’s sobriety. He obtained and maintained part-time employment at an upholstery business, and enrolled in drug and alcohol counseling courses at Career Colleges of America, which will be valuable to father in maintaining his own sobriety and to help others achieve sobriety. And father participated in creating a case plan for the children and made efforts to bond with them by visiting weekly.

All of father’s efforts are commendable, and the juvenile court properly encouraged him to continue them. But, as father readily admitted, he started using drugs

at the age of 15 and had used methamphetamine his entire adult life to that point. Father was unable to provide for the children because of his drug addiction and criminal history, and he was incarcerated for much of their short lives. Moreover, father admitted he previously completed a 90-day inpatient drug treatment program and a 60-day outpatient program, which included regular attendance of NA meetings, after which he relapsed and was arrested on drug charges. He was in custody on those charges when DPSS filed its petition, and those charges were not yet resolved at the time of the hearing on father's petition. In light of his long history of addiction and drug use, father's sobriety was recent, of relatively short duration, and was not guaranteed to continue. Under those circumstances, the juvenile court did not abuse its discretion by concluding father had, at most, shown he was in the process of changing the circumstances which lead to the children's dependency, but that father had not shown he had completed his reformation and definitively changed the circumstances of the dependency.

Likewise, we conclude the juvenile court did not abuse its discretion by concluding reunification of the children with father and the granting of reunification services to father was not in their best interests. Father contends his proof of sobriety and rehabilitation so far satisfied the first and third factors used in determining whether granting the petition is in the best interests of the children. But, as with the changed circumstances analysis, the evidence of father's commendable, though recent, sobriety was not so substantial that no reasonable judge would have ruled the same way as the juvenile court did here. The seriousness of the reason for the dependency is undisputed—the parents were both drug users who failed to provide for the children and

placed them at risk of physical harm. (See *In re D.R.*, *supra*, 193 Cal.App.4th at p. 1512.) Father was in the process of changing those circumstances, but the record supports the juvenile court's finding that the circumstances had not changed sufficiently to alleviate the reasons for the dependency. And the fact that father had previously completed a drug treatment program and had relapsed, shows the difficulty of alleviating the reasons for the dependency and why they were not alleviated before. (*Ibid.*)

Finally, father did not submit evidence that his bond with the children was sufficiently strong to warrant granting his petition. (*In re D.R.*, *supra*, 193 Cal.App.4th at p. 1512.) J.D. had lived with father for the first six or seven months of his life before father was imprisoned and, before father's most recent arrest, father had only occasionally visited J.D. because mother would not let father see the child. R.D. never lived with father. Father had regular supervised visits with the children at the DPSS office and with their caregiver, and he acted appropriately and was affectionate with the children. Father testified that during his visits, the children recognized him as their father, and J.D., the eldest, called him "daddy." He also testified that J.D. would sometimes run up to father when dropped off for a visit, and that J.D. would not cry at the end of the visit. While that was evidence of some bond between father and the children, in light of the other factors, it was not substantial enough for the juvenile court to conclude that granting father relief under section 388 would be in the best interests of the children.

B. *The Juvenile Court Did Not Err by Finding the Children Would Not Benefit from Father's Continued Parental Relationship*

“Section 366.26 provides that if parents have failed to reunify with an adoptable child, the juvenile court must terminate their parental rights and select adoption as the permanent plan for the child. The juvenile court may choose a different permanent plan only if it ‘finds a compelling reason for determining that termination [of parental rights] would be detrimental to the child [because]: [¶] (i) The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.’ (§ 366.26, subd. (c)(1)(B)(i).)” (*In re Marcelo B.*, *supra*, 209 Cal.App.4th at p. 642.)

As the parties acknowledge in their briefs, the appellate courts have divided on the appropriate standard of review of the juvenile court’s conclusion that the benefit exception does not apply. Some courts have applied the abuse of discretion standard while others have applied the substantial evidence test. (See *In re Scott B.* (2010) 188 Cal.App.4th 452, 469.) Recently, some courts have taken a middle approach, applying the substantial evidence test to the juvenile court’s factual finding of whether there exists a beneficial parent-child relationship, and applying the abuse of discretion standard to the juvenile court’s ““quintessentially” discretionary decision” that termination of parental rights will not be detrimental to the child. (*In re K.P.* (2012) 203 Cal.App.4th 614, 621-622, quoting *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1315.) We need not decide which approach is correct, because under either standard the juvenile court did not err.

There is no dispute father visited regularly with the children, and those visits went well with the children showing affection for father. Consequently, we disagree with DPSS's assertion that father "was, at most, a friendly visitor or playmate to the children." The pertinent issue then becomes whether the second prong of the exception applies, i.e., whether the children would derive a greater benefit from continuing the parent-child relationship with father than they would from being adopted. (*In re B.D.* (2008) 159 Cal.App.4th 1218, 1234-1235.)

In re Autumn H. (1994) 27 Cal.App.4th 567, is the seminal case regarding exceptions to the preference for adoption. There, the court held that parent-child relationships that can prevent termination of parental rights are ones that promote "... the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*Id.* at p. 575.)

“The exception must be examined on a case-by-case basis, taking into account the many variables which affect a parent/child bond. The age of the child, the portion of the child’s life spent in the parent’s custody, the ‘positive’ or ‘negative’ effect of interaction between parent and child, and the child’s particular needs are some of the variables which logically affect a parent/child bond.” (*In re Autumn H.*, *supra*, 27 Cal.App.4th at pp. 575-576.)

Adoption cannot be thwarted simply because a child would derive some benefit from continuing the parent-child relationship, and adoption should be ordered when the court finds that the relationship maintained through visitation does not benefit the child significantly enough to outweigh the strong preference for adoption. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.) The juvenile court may reject the parent’s claim simply by finding that the relationship maintained during the visitation does not benefit the child significantly enough to outweigh the strong preference for adoption. To apply the exception, the court must find compelling reasons to apply the exception. Only in an extraordinary case will the preservation of parental rights prevail over the Legislature’s preference for adoption. (*Ibid.*)

As noted, there is no genuine dispute that father was affectionate with the children during his regular visits, and they, especially J.D., recognized him as their father and reciprocated affection. But there was no further evidence to demonstrate how deeply attached the children were to father, and no bonding study was conducted. There is no indication that the children cried at the end of their visits, or that they were unhappy to return to their caregiver. To the contrary, the children were placed on an extended visit

with mother's second cousin in March 2013, and the children were formally placed with her as their caregiver and prospective adoptive parent in April 2013, seven months before the section 366.26 hearing. DPSS reported the prospective adoptive mother has had a relationship with the children since their births, and that "it appears that a strong mutually positive parent-child bond exists between the children and their prospective adoptive mother." DPSS also reported that the children "appeared to be well adjusted" in their placement. "The children have not known any other home or 'mother' other than this home and the maternal cousin whom they refer to as 'mom' and [they] call her biological sons, 'brother.'"

Considering the children's tender ages, the fact J.D. lived with father for only a brief time and R.D. never lived with father, and the demonstrated strength of the long-term bond between the children and their prospective adoptive mother and her family, the juvenile court did not err by concluding the bond between father and the children was not so substantial that severing it would be detrimental. The benefits the children would derive from a continued parental relationship with father, whose long-term sobriety and ability to provide for them were not yet proven, did not outweigh the benefits they would derive from a stable and secure adoptive family. The record supports the trial court's findings, and we find no abuse of discretion.

III.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

McKINSTER
Acting P. J.

We concur:

KING
J.

MILLER
J.